SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 163

JOSEPH OBERGFELL, PETER BOLLENBACHER, ALBERT J. KUGLER, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL AND SOFT DRINK WORKERS OF AMERICA, ET AL.,

Petitioners,

vs.

WILLIAM GREEN, FRANK MORRISON, JOHN COEFIELD, THE AMERICAN FEDERATION OF LABOR AND THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS, ET AL.,

Respondents.

REPLY BRIEF.

MARTIN F. O'DONOGHUE,
WILLIAM J. HUGHES, JR.,
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PETITIONERS' REPLY BRIEF.

I.

Respondents claim that the "Declaration of Jurisdiction" is not a transfer of men.

Respondents claim that petitioners' counsel has misstated the basic issue in the case in asserting that the so-called "declaration of jurisdiction" amounted, in effect, to a transfer of men from one union to another against their will. We are unable to understand this assertion as Mr. Padway, respondents' counsel, frankly took the position at the trial that the order was a transfer of men.

His position now is that the order is not a transfer of men; that the decision did not operate as a transfer because neither the union nor its members are compelled to obey it. If they disregarded the decision respondents' counsel said they could simply withdraw from the American Federation of Labor. His position therefore is that

the jurisdictional decision required petitioners to transfer their men to the Teamsters Union "or else". Hence, the "declaration of jurisdiction" amounted to a threat that petitioners would be expelled from the A. F. of L. if they did not observe the decision. Petitioners' position has been clear:

(1) The A. F. of L. is expressly prohibited, under its constitution, by virtue of Sec. 11, Art. IX, to change the established trade jurisdiction of an affiliated international union under the guise of a "jurisdictional decision".

(2) Compelling men to observe a "jurisdictional decision" by transferring them from one union to another or, in the alternative, making them lose substantial property rights i.e. in death, sick benefits, etc., in the union of their choice is, in effect, a transfer of men from one union to another.

That respondents' position at the trial was that the "jurisdictional decision" was a transfer "or else", the following statements by Mr. Padway at the trial shows:

> "Mr. Padway: * * * I am going to use the word 'transfer' now. Counsel will be pleased to see that certain transfers were to be made.
>
> "Yes, certain transfers to be made. I am not afraid to use that word. I say that no other construction can be placed on the effect of the order, but that it effects a transfer. And we will see what that means. To transfer by compliance and non-compliance are two different things. They do not have to comply. They can simply leave the organization. If they comply it does effect a transfer. We need not quibble about that at all. They were told to go out and adjust. They were to release and turn over to one another; they were to straighten out their jurisdiction." (R. 1544)

There is also a further statement of Mr. Padway:

> "Mr. Padway: What will be the effect of an order of this kind, if carried out? If the orders of the Ameri-

can Federation of Labor were carried out then the brewery workers would transfer its members to the teamsters, or vice versa.

"But the American Federation of Labor cannot effect the transfer. Why? Because Mr. Obergfell as an officer of his organization, and the other officers may say, 'We refuse to do it.' What can the American Federation of Labor do then? Can it send a single man over to the teamsters from the brewery workers if he does not want to go? It cannot. We neither claim nor do we say that jurisdiction vests in the American Federation of Labor. All the American Federation of Labor can do is impose certain penalties in line with its constitutional procedure upon the brewery workers. It can say 'You have not followed our decree to divest yourself of the jurisdiction of the teamsters in your organization. Consequently we will suspend you, expel you or pass it up.' We can do as we please.

"The use of the word 'transfer' is merely to designate the effect of a complied order, of an order that has been complied with. But let us bear in mind that the American Federation of Labor has not jurisdiction over a single individual of their organization. It can make no order respecting an individual. It can order the brewery workers to do something and if it doesn't do that, then they can take appropriate measures to impose whatever disciplinary action it pleases." (R. 729-30)

There was also a further colloquy:

"The Court: Suppose they didn't want to do that? Suppose they want to stay with the American Federation of Labor?

"Mr. Padway: Then we have the right to make these orders, and we have the right, if they want to stay with us, to say they must obey them.

"The Court: You say, as I understand it, that there is no difference whether they order them to affiliate with the teamsters or simply make a declaration of jurisdiction.

"Mr. Padway: You can call them orders or declarations or pronouncements, if you please.

"The Court: The first thing you know, you and I are going to agree about this thing of distinction between passing an order of transfer and declaring a question of jurisdiction. The effect is exactly the same.

"Mr. Padway: If your Honor please, the effect is the same, call it 'Order of transfer,' 'Jurisdictional award,' or whatever it may be, the effect of it is the same. I am not going to run away from that and stultify my own conscience making an argument before the Court that I know isn't so. The effect of it is the same, but the enforcibility, if the Court please, does not remain with the American Federation of Labor. In other words, suppose they have a fund of a million dollars or $100,000. The American Federation of Labor can't touch a dollar of it. The American Federation of Labor can't take their members either. They can leave and take all their members with them.

"The Court: You may be entirely right. I say you may be, because I haven't reached the slightest conclusion about this in my mind, but your argument, as I understand it, leads to this conclusion: That by virtue of this subterfuge the American Federation of Labor can do indirectly what the law won't permit it to do directly.

"Mr. Padway: The law will permit them to do it directly.

"The Court: I understood you to say it would not.

"Mr. Padway: Oh no.

"The Court: I understood you to say they could not pass an order which would transfer these members from one organization to another.

"Mr. Padway: Oh, they could if the Constitution permitted.

"The Court: But that is the question.

"Mr. Padway: Their constitution doesn't provide that the American Federation of Labor shall have powers of enforcement.

"The Court: But you are exercising them, aren't you?

"Mr. Padway: No, we are not.

"The Court: That is just what I mean. Isn't the effect of what the American Federation of Labor is actually doing—isn't the effect of it to make a transfer by subterfuge, and by so doing take jurisdiction over their men?

"Mr. Padway: Oh, not at all." (R. 1569-1570)

Respondents' counsel further conceded in the trial court that the order of the American Federation of Labor would cause irreparable harm, damage, and injury to the Brewery Workers.

"Mr. Padway: I would say this to you: If this order is improper on the part of the American Federation of Labor I certainly will not stand before this Court and say the brewery workers have not suffered irreparable damage. I will concede that. There is no question but what they have suffered irreparable damage, and therefore the question is immaterial. There is a logical legal inference if the American Federation of Labor has improperly and illegally, let us say granted jurisdiction of the members of the brewery workers to the teamsters, the brewery workers will suffer irreparable damages. One would have to stultify one's conscience to say otherwise." (R. 731-732)

A "jurisdictional award" which orders the transfer of men from one union to another "or else", is, we think, in effect, a transfer of men, and we have not misrepresented the matter in any way.

II.

The American Federation of Labor itself has consistently referred to the "Declaration of Jurisdiction" as a Transfer of Men.

A. Green-Ornburn Referendum.

The Green-Ornburn Referendum in 1934 taken by the A. F. of L. to ascertain the wishes of the Brewery Workers,

referred to the A. F. of L. program as a "transfer" of men. The proposition submitted to the members on the referendum ballots was as follows:

> "Shall the International Union (Brewery Workers Union) comply with the proposition submitted by President Green and I. M. Ornburn to the effect that beer drivers, and members of our International Union *be transferred* to the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers"? (R. 1757) (Italics ours.)

B. The 1900 Convention.

The Brewery Workers were admitted to the Federation in 1887 with beer drivers as part of their jurisdiction; some 13 years later the Teamsters were admitted in 1899. At the next Convention of the Federation at Louisville, Kentucky in 1900, the Teamsters submitted Resolution No. 16 (R. 492, 493):

> "Resolved, Conforming to the above, that the Convention directs the National Union of United Brewery Workers to instruct all * * * team drivers * * * employed in breweries whose trades are organized and affiliated herewith, to immediately join a legitimate union of their trade and to withdraw from membership in the National Union of United Brewery Workers."

This Resolution, together with Resolution 77 (R. 494) and Resolution 124 (R. 496) dealt with the question of the transfer of men from one union to another. The Grievance Committee that considered these resolutions stated:

> "We desire to further say that this convention cannot, in our opinion, presume by resolution or otherwise to *transfer* bodies of men from one organization to another, unless with their consent" (R. 497). (Italics ours.)

It was the same Grievance Committee that recommended the adoption of Sec. 11, Art. IX into the Federation's Constitution (R. 498-499).

Thus as far back as 1900 the A. F. of L. itself referred to a Resolution similar to the present "jurisdictional decision" as a transfer of men and held it had no such power, even under the guise of trade autonomy. It is this 41 year old decision which the Court of Appeals has overturned on the basis of the A. F. of L's. "large and comprehensive plan for the protection and benefit of toiling millions of laborers"! (R. 2781)

C. 1913 Convention Re Transfer of Men.

The 1913 Convention of the American Federation of Labor decided:

> "That brewery teamsters are nearly all organized into and holding voluntary membership in the Brewery Workers organization. On the facts established, we see no justification for the *transfer* of these men from the Brewery Workers Union and so decide." (R. 652) (Italics ours.)

After this decision by the Convention in 1913 President Samuel Gompers addressed a letter to Mr. Tobin, President of the Teamsters (R. 663). In this letter speaking of the 1913 decision Samuel Gompers said:

> "The decision of the Executive Council contemplates that as the brewery workers and brewery drivers have become peculiarly situated and identical, they should be members of the brewery workers International Union.
>
> "It is common knowledge that regardless of the efforts made by your International Brotherhood the brewery drivers have been practically all organized under the Brewery Workers International Union. That no matter what view anyone may entertain, it is an

> accomplished fact and admits of no doubt, and that regardless of what action to the contrary will be taken by your organization, and all other organized effort, so long as the brewery drivers desire to remain a part of the Brewery Workers International Union, and the latter will contend for the retention of these men in that organization, the status will remain as it now exists" (R. 664).

D. President Green of the Federation Supports "Transfer of Men" order.

In a letter addressed to the Cleveland Brewers Association of Cleveland, Ohio by President William Green of the American Federation of Labor, Plaintiff's Exhibit No. 25, (R. 1806-1807), in speaking of the "decision" of the American Federation of Labor Mr. Green said:

> "Team drivers employed by breweries are conforming to this decision of the American Federation of Labor when they become members of the International Brotherhood of Teamsters. * * * The management of the breweries are showing respect for the decisions of the American Federation of Labor and are complying with said decisions when they recognize the jurisdiction of the Teamsters, Engineers and Firemen's International Unions over their respective membership employed by brewery manufacturing plants" (R. 1807).

III.

Respondents contradict themselves when they state Federation can suspend the Brewery Workers for failure to comply with order.

Respondents admit that the American Fdeeration of Labor does not have the power under its Constitution to transfer a members of the Brewery Workers Union to the Teamsters Union (Respondents' Brief p. 5, 6). They unequivocally state that the Federation has no power over

the membership, the locals, the contracts, the funds, or other rights of the Brewery Workers or any other Internationals affiliated with the Federation on the grounds of autonomy (Respondents' Brief, p. 7).

As already seen they argue that the order of the American Federation of Labor is merely a declaration of jurisdiction and not an order of transfer. Yet, counsel for the Respondents conceded at the trial that whether you call the "'Order of Transfer' 'Jurisdictional Award' or whatever it may be the effect of it is the same" (R. 1569). While the order may be called a declaration of jurisdiction, nevertheless the effect of it is to transfer the men from one union to another (R. 1568-1569). It is a distinction in form, but in substance it is an order of transfer of men. The Trial Court decided that it was an order of transfer. As the Court stated:

> "Mr. Reyman: This is not a transfer. It is a decision as to what the jurisdiction is.
>
> "The Court: What is the difference? The difference is subtle—it is too subtle for my understanding. You can call it one thing, but a rose by any other name is just as sweet." (R. 351; see also R. 1569-70)

Counsel state in their brief and concede that the Federation does not have the power to control the membership, the funds, or contracts of any International Union, and yet at the same time attempt to argue that the Federation has the power to make an order that effectuates the transfer of men from one union to another under threat of suspension or expulsion. While they admit that the Federation cannot control the individual members of the Brewery Workers Union, or their property, nevertheless, they argue it can pass an order that would transfer the men from one union to another (thereby making them lose their

sick, death and out-of-work benefits) if the men wish to stay in the A. F. of L. Such logic is intrinsically contradictory.

IV.

Respondents' Criticism of Form of Petition.

Petitioners have carefully reexamined their petition in the light of respondents' criticism of its form and feel that they have accurately set forth the Questions Presented. The matter involved is complex and questions presented are not necessarily the surface questions but the underlying implications and effect of the extraordinary decision below.

As to respondents' charge (respondents' brief, page 10) that petitioners are guilty of "many inaccurate and, we think, deliberately misleading references to the record", petitioners' counsel has been a member of the Bar of this Court since 1923, has filed many petitions and briefs herein and has never yet been accused of any such misconduct here or in any other court. The example given by respondents that the Chief of Detectives of Portland, Oregon, did not testify that the local police authorities were unable to give adequate protection is answered by the record (R. 836) wherein the Chief of Detectives stated that as a result of the Teamsters' activities in Portland "there was a reign of terror, window smashing, beat-ups, bombings." This witness put in evidence a few of the confessions of the Teamsters' thugs (over 50 of whom were convicted and sent to jail) (R. 847) which showed on their face the inadequacy of police protection (R. 846, 847, 850).

As to respondents' criticism of the "incredible device" of petitioners in referring to a report of the Executive Council of the A. F. of L., dated February 21, 1941, in the case of the International Typographical Union, which report repudiated the decision below and held that the

A. F. of L. had no power to make a "jurisdictional decision" such as the present one, this report was presented to the court below and made a part of the present record as part of a Petition for Rehearing filed below. Petitioners were fully justified in presenting this data to the court below and to this Court. The court below on the basis of this report might have remitted the case to the trial court for reconsideration. (*National Brake & Electric Co.* v. *Christensen*, 254 U. S. 425). Likewise this Court could consider the report to determine whether, under Rule 38 (4) (c) the court below had decided a question of general importance. If respondents questioned the authenticity of the report or its relevancy to the decision below, they had their opportunity in the court below.

Conclusion.

The trial court repeatedly asked respondents' counsel to cite an instance wherein the A. F. of L. had ever taken jurisdiction from a senior affiliated union and given it to a later incoming union. No such instance could be cited (R. 1152). Under the subterfuge of a "declaration of jurisdiction", coupled with the implied threat of suspension of expulsion for non-compliance, the A. F. of L. has attempted to compel the transfer of free workers from a union of their choice to another. Thus a worker who desires to remain in a union affiliated with the A. F. of L. will be compelled to join a union not of his choice and to forfeit sick, death, and out-of-work benefits in the union to which he already belongs (R. 1664). Such a program, validated by the court below, is a form of fascism, of highly improbable legality under the Constitution of the American Federation of Labor and vicious and illegal under the Constitution of the United States.

The right of liberty, the right of property and the right of contract is more inbred in the American people

than in any other people in the world. The right of a laboring man to join and remain in a union of his own choosing is a right of liberty and of contract that should be zealously guarded and protected. The rights of liberty and of contract of the 15,000 beer drivers are at stake in the issue presented in this petition. Human rights as well as rights of property are deeply involved. The right of these men to remain in a union of their own choosing and to protect their rights of property in their local unions is at issue—or shall they be compelled to move from one union to another as if they were mere chattels or articles of commerce, instead of human beings?

It is respectfully submitted that the petition below should be granted.

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